NO. 10- COURT'S ORDER WHETHER THE CASE IS OR IS NOT APPROVED FOR REPORTING

[Chapter VIII, Rule 32(2) (b)]

Description of Case

Criminal Appeal No. 253 of 2001

(Old Criminal Appeal No. 1955 of 1985)

1. Uttam Singh
2. Har Singh

Vs.

State of U.P.

A.F.R. (Approved for Reporting)
~~Not Approved for Reporting~~

(B.S. Verma, J.) **(Irshad Hussain, J.)**

Date December 09, 2005 *Initials of Judge.*

Reserved Judgment

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Criminal Appeal No. 253 of 2001
Old No. Criminal Appeal No. 1955 of 1985

1. Uttam Singh,
2. Har Singh,Sons of Pratap Singh,
Both residents of village Dhyuli-Aroli,
Patti Malla Salam, District Almora.

…Appellants.

Versus

State of Uttar Pradesh.

…Respondent.

Sri B.S. Adhikari, Adv., learned counsel for the appellants-accused.
Sri G.S.Sandhu, Learned A.G.A. for the respondent-State.

Coram : Hon'ble Irshad Hussain, J.
Hon'ble B.S.Verma, J.

Dated December 09, 2005

(Per Hon'ble B.S.Verma, J.)

This Criminal Appeal under Section 374(2) of the Code of Criminal Procedure is directed against the judgment and order of conviction, dated 23-7-1985 passed by the then Sessions Judge, Almora, in Session Trial No. 2 of 1985, State Vs. Uttam Singh and 3 others, whereby the accused-appellants were found guilty of the offence punishable under Sections 302/34 and 307 of the Indian Penal Code and were accordingly convicted and sentenced to life imprisonment and four years' R.I. respectively. Accused-appellant Uttam Singh was further convicted and sentenced under Section 450 I.P.C. to undergo three years' R.I. The sentences were ordered to run concurrently. Co-accused Jagat Singh and Bir Ram were acquitted of the charges levelled against them under Sections 302/34 and 307/34 I.P.C.

2. Brief facts of the case emerging from the record are that the complainant Jagat Singh (PW 1) were resident of village Dhuli-

Dhauni. Smt. Debuli Devi is his wife and Dewan Singh deceased was their son. Accused Uttam Singh and Har Singh are real brothers. Co-accused Jagat Singh was their cousin. Accused-appellants are also residents of the same village. The agricultural fields of Jagat Singh as well as accused-appellant Uttam Singh and Har Singh lay in the same village Dhyuli. In nutshell the prosecution story as unfolded from the evidence may be narrated hereunder for better appreciation of the case.

3. According to prosecution story on 15.10.1978, goat of Jagat Singh injured grazed the field of accused Uttam Singh and Har Singh and caused some damage to the standing crop. On that count, wife of accused Jagat Singh hurled abuses of the wife of Jagat Singh and there was exchange of abuses from both the sides. Dungar Singh Pradhan (P.W.3) intervened and the wife of accused Har Singh went away. On the following day, i.e. 16.10.83, wife of accused Har Singh started abusing Smt. Debuli Devi. At that time, she (Debuli Devi) was present in the outer Angan of the house and was cleaning the Angan and Jagat Singh was working in the outer room of the first floor of house called 'Chakh'. He was unfolding the piles of 'Madua' for thrashing the same. Wife of Har Singh, standing near the temple of Haru deity, started abusing Smt. Debuli Devi. House of accused in situate nearby. Exchange of abuses took place from both the sides as Smt. Debuli Devi went on shouting in the same manner. Jagat Singh asked his wife not to do so, who kept mum. Lateron, accused Uttam Singh and Har Singh armed with 'Khukaris' went to the house of Jagat Singh. Uttam Singh entered the 'Chakh' of Jagat Singh and blow of Khukari directed on his head was warded off by means of the wooden slate used by children whereas accused Har Singh assaulted Smt. Debuli Devi by Khukari wielded by him. Thereafter accused came out of the house of victims and went in the field situated in the rear of the house of the victims. Jagat Singh and his wife Smt. Debuli Devi also proceeded towards field and saw that accused Uttam Singh, Har Singh, Jagat Singh and Bir Ram had surrounded their son Dewan Singh. Uttam Singh and Har Singh

were wielded Khukaris and Jagat Singh s/o Madho Singh and Bir Ram were standing nearby having stones in their hands. When complainant Jagat Singh shouted, accused Uttam Singh assaulted him with Khukari again and Har Singh caused injuries to Smt. Debuli Devi. Accused Jagat Singh caught hold of Dewan Singh, while accused Uttam Singh and Har Singh gave Khukari blows to him. Hearing the alarm raised by Jagat Singh and his wife, Dungar Singh, Amar Singh, Jaman Singh and Shiv Singh reached the scene of occurrence and intervened to rescue the victims. Accused persons then left the place of occurrence. All the three persons, Jagat Singh, his wife Debuli Devi and son Dewan Singh suffered injuries and had fallen in the field. They were taken for medical examination and treatment.

4. Patwari Madhan Singh (PW 8) was available in the village Dhuli-Dhauni on account of some official work. Dungar Singh (PW 3), the then Pradhan of the village concerned, lodged a written report Ext. Ka-1 with the Patwari Circle Sangarh stating therein that on 16-10-1983 at about 1.30 p.m., Uttam Singh, Har Singh,Jagat Singh, s/o Madho Singh and Bir Ram assaulted Jagat Singh, his son Diwan Singh and his wife Debuli Devi by Khukari causing severe injuries to them and their lives are stake. They were given 2-3 blows by Khukaris and then accused ran away to their houses. On hearing hue and cry, he and Amar Singh, Jamas Singh, Keshar Singh and Kishan Singh assembled there and intervened else the accused would have finished them. Accordingly Check F.I.R. Ext. Ka-18 was prepared by the Patwari on the same day. Since the condition of the injured was critical, Patwari arranged for taking them to the hospital. When they were sent to hospital Patwari took Dungar Singh and others to the place of occurrence. Patwari recorded the statement of Dungar Singh and made inspection of the site. He found blood on the door-step of the house and right upto the field of injured Jagat Singh. He also found two Chappals, one cover of Khukari and one Jhola in that field. He took in his possession these articles as well as sample of blood stained and plain mud and

prepared Fard Ext. Ka-19. The Naib Tehsildar and Kanungo were informed about the arrest of the accused persons. Dewan Singh injured succumbed to his injuries while being taken to the hospital while injured Jagat Singh and his wife Smt. Debuli Devi were medically examined by P.W. 6 Dr. L.S.Kanyal on 16-10-1983 between 9-10 p.m. and 9-30 p.m. Injured Jagat Singh was medically examined at 9-10 p.m. The following injuries were found on his person:-

1. Incised wound 6 cm x 1.5 cm x bone deep over vertex 9 cm above middle left eye brow and 9 cm above the top of left ear. Blood clot present.
2. Incised wound 5 cm x 0.5 cm x bone deep 2 cm medial to injury no.1.
3. Incised wound 6 cm x 1 cm x bone deep over vertex, 10 cm above the middle of right eye brow and 12 cm above the top of right ear.
4. Incised wound 3 cm x 2 cm x bone deep on left occipital region, 4 cm above the left mastoid process, transversally place, bleeding present.
5. Incised wound 3 cm x 1 cm 0.5 cm, 2 cm below the outer border of left scapula.
6. Incised wound 6 cm x 0.2 cm x 0.2 cm, 10 cm below the left shoulder.

5. All the injuries were kept under observation and X-ray was advised. The doctor opined that the injuries were caused by some sharp-edged weapon and were about half day old. Dr. Kaniyal proved the injury report Ext. Ka-14. He also examined the injuries of Smt. Debuli Devi at 9-30 p.m. and found the following injuries on her person.

1. Incised wound 6 cm x 1.5 cm x bone deep over vertex, 11 cm above the middle of right eye brow and 10 cm from the top of right ear. Fresh blood clot present.

2. Incised wound 2 cm x 0.5 cm x muscle deep on the dorsal aspect of left middle finger 0.5 cm below the nail bed.
3. Incised wound 2 cm x 0.3 cm x muscle deep on the dorsal aspect of left ring finger, 1 cm below the nail bed.
4. Contusion 5 cm x 3 cm reddish in colour in front of right thigh upper part.

6. In the opinion of the doctor, injuries no. 1 to 3 were caused by some sharp-edged weapon and injury no.4 was caused by some blunt object. Injuries no. 1 to 3 were kept under observation and X-ray was advised. In the opinion of the doctor, all the injuries were half-day old. PW 6 proved the injury report Ext. Ka-15, prepared by him. In his testimony, Dr. L.S. Kanyal PW 6 stated that the X-ray of the left hand of Smt. Debuli Devi was taken on 20.10.83, X-ray plate thereof is Ext. 15 and Ext. Ka-16 is the X-ray report given by Dr. A.P.Pande, Radiologist of the District Hospital, Almora. In the X-ray, fracture of distal phalange of middle finger of left hand was noticed.

7. Autopsy on the dead body of Dewan Singh was conducted by Dr. M.L.Agarwal, P.W.7, on 17-10-1983 at 1.00 p.m. who found the following ante mortem injuries:-

1. Incised wound 7.5 cm x 1 cm x bone deep over right tempera parietal region 5 cm above the right ear and 18 cm above the right eye brow, directed obliquely and trailing towards parietal region
2. Incised wound 3 cm x 0.5 cm x muscle deepover palmar aspect of left hand between the base of thumb and index finger extending towards dorsum of the hand.
3. Abrasion 1 cm x 0.5 cm over left knee.
4. Multiple abrasions in an area of 18 cm x 10 cm over back in the lumbosacrat region smallest measuring 1 cm x 0.2 cm and the largest measuring 3 cm x 0.2 cm.

8. On internal examination, the temporo parietal bone was found fractured under injury no.1, membranes of brain were

congested and were lacerated under the injury. Blood clot was present. Both the lungs were congested and 1 oz. semi-digested food was present in the stomach. In the opinion of the autopsy surgeon, the death was caused as a result of injury no.1. PW 7 Dr. M.L.Agarwal has proved the Post Mortem Report Ext. Ka-17. He stated that the deceased could have died between 1.30 p.m. and 10 p.m. on 16.10.1983. In the opinion of the doctor, injuries no. 1 and 2 could be caused by a Khukari and injury nos. 3 and 4 by blows of fists and kicks as well as from the blunt side of Khukari. It was opined that injury no.1 in the ordinary course of nature was sufficient to cause the death of the said victim.

9. The accused persons were arrested by Vikram Singh Latwal Supervisor Kanungo (PW 4) on 17-10-1983 at village Bakh about 6-7 km. before Almora when they were proceeding by bus for their escape to Almora. On their search, blood stained clothes on the person of accused as well as one Khukari, one Darati were found in a bag possessed by accused Uttam Singh. PW 4 sealed all the recovered articles and memos. Ext. Ka-3 to Ka-6 were prepared.

10. On 17-10-1983 itself, Madan Singh Patwari (PW 8) the Investigating Officer came to know about the arrest of the accused persons. He proceeded there. Vikram Singh Latwao PW 4 handed over the accused persons to the Patwari as well as the recovered articles and the relevant papers. Accused persons were medically examined at Almora. The I.O. reached the District Hospital Almora on the same day and found that both the injured Jagat Singh and Smt. Debuli Devi were not in a condition to give their statements. He recorded the statement of PW 4 on 18.10.1983. On 19-10-83, the I.O. recorded the statements of injured Jagat Singh and Smt. Debuli Devi (P.W.1 and P.W. 2 respectively) and he took in his custody the blood stained clothes worn by them at the time of occurrence. The Investigating Officer went to the scene of occurrence on 22.10.1983. The lock of the house of injured Jagat

Singh was opened. The I.O. found blood stains on the floor of the room. He collected the sample of blood stained and plain earth from the spot and prepared memo Ext. Ka-20. He got deposited this property in Sardar Malkhana on 3.11.1983 and the I.O. prepared a report for sending the same to chemical examiner. The I.O. again reached the place of occurrence on 26.11.83 and inspected the place in the presence of Jagat Singh, Debuli Devi and Dungar Singh (PWs. to 3 respectively) and prepared a site plan Ext.Ka-21. On completion of the investigation, the I.O. submitted the charge-sheet against all the four accused on 7.3.1984 in the court of the Chief Judicial Magistrate Almora. Who in turn committed the case of the court of Session for trial of the accused persons.

11. The Sessions Judge Almora framed charges against the accused on 11.2.1985. Accused Uttam Singh and Har Singh were charged under Section 302, 307 and 450 of the I.P.C., while accused Jagat Singh and Bir Ram were charged under Section 302/34 and 307/34 I.P.C. Subsequently, on 23.4.1985, additional charge under Section 302/34 I.P.C. was framed against accused-appellant Uttam Singh and Har Singh. Accused persons pleaded not guilty to the charges and claimed to be tried.

12. The prosecution, in order to bring home the guilt to the accused, have examined as many as eight witnesses in the case. Out of them, Jagat Singh, injured, is P.W.1, Smt. Debuli Devi, wife of Jagat Singh, who was also injured in the occurrence, is P.W.2 and Dungar Singh, Pradhan and the reporter as well as eye witness, is P.W.3. They are the witnesses of fact. P.W. 4 is Vikram Singh Latwal, Supervisor Kanungo. P.W. 5 is Constable Bishan Datt who has proved the handwriting and signatures of S.I. Khitab Singh, who purports to have conducted the inquest proceedings of the dead body at the District Hospital, Almora on 17.10.1983. PW 5 also proved entry in the G.D. Report No. 37 dated 16.10.1983. PW 6 is Dr. L.S.Kanyal who examined the injuries on the person of injured PW 1 and PW 2 as has been referred to above. P.W. 7 is Dr.

M.L.Agarwal who conducted autopsy on the dead body of Dewan Singh. P.W. 8 is Madan Singh Patwari and I.O. of the case. Besides, the prosecution tendered in evidence the report of the Chemical Examiner and Serologist U.P. Ext. Ka-24.

13. Both P.W.1 and P.W.2 who are husband and wife and have suffered injuries in the occurrence. Deceased Dewan Singh was their son. P.W.1 and P.W.2 have fully supported the prosecution story and have stated the manner in which they sustained injuries and how their son Dewan Singh was assaulted by the accused. Dungar Singh P.W.3 who came out of his house on the alarm raised by Jagat Singh is the witness of the second part of the occurrence wherein Dewan Singh was surrounded by the accused and was caused fatal injuries by the accused. Their evidence shall be referred to in the latter part of the judgment as and when the same is necessary. The evidence of P.W. 1, P.W.2 and P.W.3 is fully supported by the medical evidence so far as it related to the injuries sustained by them and also by deceased Dewan Singh.

14. The statements of accused persons were recorded under Section 313 Cr.P.C. It is admitted to the accused that Uttam Singh and Har Singh are real brothers and accused Jagat Singh is their cousin while Bir Ram is their ploughman. They have denied all the allegations levelled against them. They also denied their arrest by P.W.4 Vikram Singh Latwal and stated that they were arrested from their house. They have alleged enmity against P.W.3 due to election rivalry. It was pleaded that they were beaten by Patwari. It was alleged that injured Jagat Singh used of prepare illicit liquor at his house and there were number of bottles at his house. They have alleged their false implication in the case. The accused have examined D.W.1 Laxman Singh Bisht, Patwari Sangarh in their defence, who has proved the F.I.R. Ext. Kha-1 lodged by Dungar Singh P.W.3 on 1.8.1983 against Mahendra Singh, Uttam Singh, Har Singh, Mohan Singh and Jagat Singh. He has stated that on

this report no investigation was made by him. Accused were not even interrogated by the Patwari.

15. After considering the evidence on record, the learned Sessions Judge came the the conclusion that the prosecution has succeeded in bringing home the guilt against the appellants for the offence under Section 302/34 and 307 I.P.C. Accused Uttam Singh alone was also found guilt under Section 450 I.P.C. Co-accused Jagat Singh and Bir Ram were given benefit of doubt. Accordingly, he passed the impugned order convicting and sentencing the accused-appellants as mentioned earlier.

16. In support of the appeal, it has been contended that the conviction of the appellants is against the evidence on record.

17. The learned Sessions Judge on the basis of the evidence of injured PW 1 Jagat Singh, PW 2 Debuli Devi and eye witness PW 3 Dungar Singh came to the conclusion that the prosecution was successful in bringing home the guilt to the accused-appellants for the offences under Sections 302 read with Section 34 of 307 of the I.P.C. while the remaining two accused, namely Jagat Singh, s/o Madho Singh and Bir Ram were acquitted of the charges under Sections 302/34 and 307/34 I.P.C. The appellant Har Singh was acquitted of the charge under Section 450 I.P.C. whereas accused Uttam Singh was convicted and sentenced to undergo R.I. for three years under Section 450 I.P.C. It is admitted case that the occurrence of Marpit had taken place between the parties. At the outset, it may be noted that the occurrence took place at broad day-light at about 1-30 p.m. The accused persons as well as the prosecution witnesses are the residents of the same village and are fully familiar with each other. Homicidal death of Deewan Singh is proved from the medical evidence on record which has already been referred above. P.W. 6 Dr. L.S.Kanyal has proved the injury reports of Jagat Singh PW 1 and Smt. Debuli Devi. Most of the injuries sustained by P.W.1 Jagat Singh were on the vital parts of

his body and they were all incised wounds. The injury report Ext. Ka-14 of PW 2 Smt. Debuli Devi shows that she sustained one incised wound about the middle of right eye brow. The seat, nature and duration of the injuries found on the person of PW 1 and PW 2 are sufficient to indicate that the injuries were received by the injured at the time of occurrence. There is nothing to indicate that the injuries were self-inflicted. In this back-ground it has to be examined as to whether the charges under Sections 302/34 and 307 I.P.C. are proved against the appellants on the basis of the material on record.

18. P.W.1, Jagat Singh has stated that the occurrence took place on 16-10-83. Another incident preceded on 15.10.1983 when the wife of accused-appellant Har Singh was hurling abuses on his wife (Debuli Devi) at the time of sun-set. His wife also exchanged words in the same manner. Then Dungar Singh Pradhan (PW 3) intervened and pacified then and wife of Har Singh went to her house. He further stated that on 15.10.83 in the day, his goat entered the field of Uttam Singh and Har Singh and damaged the crop, which led to the abuses hurled by the wife of Har Singh. On 16-10-83 at about 1 p.m. when he was exposing the piles of Madua crop for thrashing in the outer-room on the second storey of house called 'Chaakh' and his wife was cleaning the Angan, the wife of appellant Har Singh started abusing the wife of Jagat Singh PW 1. His wife was exchanging the words in the same tone. He asked his wife to keep mum. Har Singh and Uttam Singh accused armed with 'Khukaries' came in his court-yard. Uttam Singh entered the Chaakh and wanted to give a blow on his head from the Khukari, which was avoided by him with the help of wooden slate used by children. Uttam Singh went out of the Chaakh. Accused Har Singh beat Smt. Debuli Devi by Khukari. He also stated that the place where his wife was standing is not visible from Chaakh. Uttam Singh as well as Har Singh went into the back side field. He and his wife rant towards their field in the back side raising alarm for their rescue and as soon as he was climbing on the wall of the field,

he saw that Uttam Singh, Har Singh, Jagat Singh etc. were standing in the field and had surrounded his son Deewan Singh though he had not specifically named the fourth person. He saw that accused Uttam Singh and Har Singh were wielding Khukaries and Jagat Singh and Bir Ram were standing nearby having stones in their hands. He shouted heavily. On this Uttam Singh gave a Khukari blow on his head from behind. Jagat Singh caught hold of Deewan Singh and Har Singh and Uttam Singh assaulted him by Khukari and caused injuries. His wife was also present in the field at that time and Pradhan Dungar Singh (PW 3) also witnessed this occurrence. Dungar Singh was accompanied by Shiv Singh. Dungar Singh and Amar Singh asked the accused not to assault the victims. Thereafter other village people also assembled there and then accused ran away from there. Due to injuries, Jagat Singh, his son and his wife (Debuli Devi) fell in the field in pool of blood. The village people took them to Almora Hospital via Lamgarha. He also stated that Deewan Singh succumbed in his injuries in the way and he was declared dead by the doctor. In his statement, PW 1 has further clarified that when Deewan Singh was given Khukari blow he was by the side of his field and his wife was near his son. He was shouting when accused were assaulting his son. He reiterated that Jagat Singh caught hold of his son and Uttam Singh and Har Singh assaulted him from Khukari. He clearly stated that Har Singh assaulted his wife. He further stated that his son who was a student had gone in the nearby field for grazing the cattle. It was Sunday on a date of occurrence. According to him, Uttam Singh and Har Singh bore grudge against him for the last ten years. He was cross-examined at length on behalf of accused Uttam Singh and Har Singh. At page 12 in para no.12 of his cross-examination, he has reiterated that on the fateful day, he and his wife were at their house and Dungar Singh (PW 3) was thrashing Madua in his Angan. He has clearly stated that the house of Dungar Singh alone is adjoining to his house and after that there is the house of accused Jagat Singh in the close vicinity. He has reiterated that witness Dungar Singh was very much present at the time of occurrence. He

has also stated that the court-yard of his house and that of Dungar Singh are adjoining to each other face to face. In reply to a suggestion made to him he has stated that when his wife was beaten in the Angan Dungar Singh had not reached. He has further stated that when the occurrence of assault took place in the field, Dungar Singh had reached there. From a perusal of his entire cross-examination, it comes out that defence has tried to create suspicion about the presence of witness Dungar Singh at the spot, but nothing could be brought on record to falsify the presence of PW 3 Dungar Singh in the field of occurrence where the injured witnesses were given blows and fatal blow was given on the person of Deewan Singh deceased. From the cross-examination of P.W.1 it is fully established that P.W.3 Dungar Singh was very much present at the time of occurrence which took place in the field wherein injuries on the person of P.W.1 and P.W.2 were caused and their son Deewan Singh was given fatal blow on the head by these accused.

19. PW 2 Smt. Debuli has also narrated the entire prosecution version and the same need not be repeated here. It is however evident that her statement finds corroboration from the testimony of PW 1 regarding the occurrence of assault in the field also. She has stated that her husband had come in the field . She saw that Uttam Singh, Har Singh, Jagat Singh and Bir Ram were present there and her son Deewan Singh was also there. Jagat Singh caught hold of Deewan Singh and Uttam Singh and Har Singh beat him from Khukari. Bir Ram was standing there having stone. She shouted. Har Singh gave Khukari blow resulting into injury in her finger. Uttam Singh gave Khukari blow on her husband. She has also statedt that her son fell on the ground after sustaining injuries. Dungar Singh Pradhan, his mother and others had come there. In reply to a suggestion given to her, she has stated at page no. 5 that in the field in which her son was assaulted, her husband had already reached there prior to her reaching there. She has also stated that witness Dungar Singh and his mother had also reached there.

20. Now it has to be seen as to whether the testimony of P.W.1 and P.W. 2 finds corroboration from the evidence of P.W. 3, Dungar Singh. Regarding the occurrence of 16.10.1983, he has stated that at about 1-1, 1/2 p.m., he was thrashing Madua crop in his Angan and his mother was preparing meal. Exchange of abuses started between the wife of Har Singh and Debuli Devi. The wife of Har Singh was hurling abuses from her field situate above the temple of Haru. After some time, he heard the shout "Ham Mare Gaye". Then he proceeded to the spot from where the shouts were coming. His mother also followed him. From the corner of the field, he saw that Jagat Singh and Debuli Devi were shouting for their rescue. Har Singh and Uttam Singh were coming towards Debuli and Jagat Singh armed with Khukari. Accused Jagat Singh and Bir Ram were having stones in their hands. Deewan Singh was shouting to rescue his parents when he reached in the field of the house. Accused persons proceeded towards Deewan Singh, who tried to run away. Accused Jagat Singh caught hold of him. Bir Ram having stones in his hand was standing at corner. Har Singh went to Deewan Singh and assaulted him from Khukari. Deewan Singh rolled down on the ground. Uttam Singh hit Debuli Devi and Uttam Singh assaulted witness Jagat Singh from Khukaris. He asked them not to assault. Accused persons warned him not to come forward near them. He has proved the written report Ext. Ka-1 lodged by him and has stated that is was delivered to Patwari concerned. When cross-examined he has stated that he had given true account in his statement on oath regarding the assault on the person of deceased Deewan Singh and injured Jagat Singh and Debuli Devi in the field. He has clearly stated that he had seen the occurrence of Marpit in the field and has denied the suggestion that he was not present at the spot. It may be mentioned that not a single suggestion was put to P.W.3 to indicate that this witness has come forward to state against the accused out of enmity or that he was in any way interested to support the injured side and to falsely implicate the accused in the case. Nothing material could be

brought on record favourable to the accused from his cross-examination. PW 3 Dungar Singh is the Pradhan of the village. He is the next door neighbour of the injured witnesses. Being the Pradhan of the village he was expected to be eager to lodge the F.I.R. of the case himself in the circumstances of the present case particularly when the entire family members of the victims were assaulted and the occurrence was witnessed by him. The accused have tried to show that PW 3 Dungar Singh was inimical to them due to election rivalry. They have taken such a stand in in reply to question no. 21 in their statement under Section 313 Cr.P.C. but no suggestion to that effect was put to P.W.3 Dungar Singh. The accused have also not led any evidence in their defence in this that regard. In our opinion, the learned Trial court was justified in holding that the presence of P.W.3 Dungar Singh at the time of occurrence cannot be doubted.

21. It has been argued on behalf of the appellants that the presence of P.W.3 Dungar Singh is doubtful at the spot and he is inimical to the appellants. The argument is misconceived. We have discussed above that PW 3 was very much present at his house and he was busy in thrashing Madua crop when he heard the alarm raised by the P.W.1 and P.W.2 for their rescue. As mentioned earlier, P.W. 3 Dungar Singh is the next door neighbour of the injured Jagat Singh. The appellants have utterly failed to indicate enmity against P.W.3. At the cost of repetition, it may be mentioned that no suggestion was put to P.W.3 to indicate enmity between him and the appellants though the appellants have taken a positive stand to that effect in reply to question no. 21 in their statement under Section 313 Cr.P.C. The appellants have not adduced any evidence in their defence to substantiate their stand in that regard. In the F.I.R. Ext. Ka-1 the reporter P.W.3 has stated that the assault was made in the house and Angan of the injured but such a minor discrepancy in Ext. Ka-1, which was lodged promptly

immediately after the occurrence, is not sufficient to throw out the prosecution version. The main purpose of the first information report is to inform the police of the incident to take legal action and each and every detail are not required to be contained in the F.I.R. In the case of "Bishna @ Bhiswadeb Mahato and Ors. v. State of West Bengal" (JT 2005 (9) SC 290) the Apex Court has observed that "First Information Report need not be be an encyclopedic one. It need not contain all the details of the incident." We find that there is no variation of the place of occurrence as stated by P.W.3 in his statement under Section 161 Cr.P.C. and in his testimony before the Court. As mentioned above, P.W.3 Dungar Singh is the witness of second part of occurrence which took place in the field indicated by letter 'A' in the site plan Ext. Ka-21. It may be reiterated that none of the P.W.1 Jagat Singh or P.W.2 Smt. Debuli Devi ever stated that the earlier part of the occurrence of assault in side 'Chaakh' or 'Angan' was witnesses by P.W.3 Dungar Singh. The suggestion regarding election rivalry was put on behalf of the co-accused Jagar Singh and Bir Ram to P.W.3 and not on behalf of the accused and this suggestion too was denied.

22. The learned counsel for the accused further argued that there was no prior meeting of minds or pre-plan to commit any heinous crime on the part of the accused as the origin of Marpit was the altercation between the wife of accused Har Singh and wife of Jagat Singh P.W.1 which took place firstly on 15.10.1983 and again on 16.10.1983. The argument is also not acceptable. It may be mentioned that the motive for committing the murder was stated by the P.W.1 Jagat Singh was a dispute between him and accused Uttam Singh and Har Singh about the celebration of Holi 10 years prior to the present occurrence. PW 1 has stated that as per custom of the village, Holi was celebrated at the house the Pradhan but the accused objected to it and said that Holi will be celebrated in their house. On his refusal to accede to the demand of the accused they became angry and beat him with Lathis. The villagers intervened in the matter and since then the accused were inimical to him.

Moreover, in the present case the offence of murder was witnessed by the eye witnesses, namely, P.W.1 Jagat Singh, P.W. 2 Debuli Devi and P.W. 3 Dungar Singh, therefore, the motive part of the case is not so important. As narrated earlier, PW 1 Jagat Singh has stated that on 15.10.1983 his goat had damaged the crop of accused Uttam Singh and Har Singh on which the wife of Har Singh abused his wife and there was exchange of abuses between them. On intervention of P.W. 3 Dungar Singh, the wife of Har Singh went away from that place. He has further stated that on 16.10.1983 wife of accused Har Singh abuses his wife, who exchanged the words in the same manner. P.W.2 Smt. Debuli Devi has also stated that about these two incidents of 15.10.83 and 16.10.83 before the actual occurrence in her testimony. It may be noted here that the accused were armed with 'Khukaris' at the time of actual occurrence. Khukari is a deadly weapon and wielding of the Khukari at the time of occurrence by the accused on the person of P.W.1 and P.W. 2 as well as deceased Deewan Singh is sufficient to indicate that the accused had come with a motive to commit heinous crime. The injuries sustained by the victims at the relevant time find corroboration from the medical evidence on record referred to above.

23. It was further argued that the accused had no intention to commit murder. A lane stand has been taken by submitting that the accused had full opportunity to finish the injured persons when one of them entered in the Chaakh of Jagat Singh, who was present there and the other attacked Smt. Debuli Devi when she was in her Angan unaware of the attack being caused by the appellants. The submission of the learned counsel is misconceived. It has been stated by PW 1 Jagat Singh that after he escaped the assault given by accused Uttam Singh with the help of wooden slate, he ran outside the house raising an alarm 'Bachao-Bachao'. This statement has been recorded at page 4 of his statement. There is nothing unnatural in the conduct of P.W.1 after he escaped the assault of Khukari given to him in side his house. Moreover, the

prosecution version fully establishes that the accused Uttam Singh finding the opportunity to cover deceased Deewan Singh in the open field assaulted P.W.1 also from Khukari when he raised hue and cry for the rescue of his son and soon thereafter accused Har Singh and Uttam Singh gave blows of Khukari on the head of Deewan Singh. P.W.3 Dungar Singh has stated that accused Har Singh gave Khukari blow to Deewan Singh with the result Deewan Singh rolled down on the ground. There is minor discrepancy in the statement of P.W.1 and P.W.3 regarding assault on the person of Deewan Singh. It is established that both the accused were present at the time of incident of the field. P.W.3 Dungar Singh is in a better position to narrate the occurrence because Jagat Singh P.W.1 was already hit by appellant Uttam Singh in the field. The Apex Court in the case of State of U.P. Vs. Ganga Ram and Ors [JT 2005 (9) SC, Page 362] has held that "Section 302/34- Murder- Four accused- All armed with fire weapons- However, only accused 'R' & 'L' firing- Accused 'G' and 'RS' alleged to be not taking active part- Evidence showing that both 'G' and 'RS' armed with guns- Deceased way-laid and attacked. Held that there was clear intention of the two appellants in committing offence with common intention. Conviction with aid of Section 34 justified." In our view the learned Sessions Judge was justified in holding both the accused guilty under Section 302/34 I.P.C. Moreover, the prosecution has also been successful by cogent, concrete and trust-worthy evidence of the injured witnesses P.W.1 and P.W.2 corroborated by the evidence of independent eye-witness P.W. 3 Dungar Singh and the medical evidence to proved that the accused-appellants were guilty of the offence under Section 307 I.P.C. In our view minor discrepancies with regard to part played by each accused cannot be a ground to disbelieve the witnesses produced by the prosecution. We are fortified in our view by the Apex Court Judgment in the case of "Bishna @ Bishwadeb Mahato and Ors. v. State of West Bengal" (supra] wherein while dealing with Section 3 of the Evidence Act, 1872, the Apex Court has observed that "Indian Penal Code, 1860- Sections 302, 148, 149, 34- Injured eye

witness- Improvements. Inconsistencies with regard to part played by each accused, held cannot be a ground to disbelieve the witness."

24. The learned counsel for the appellants vehemently argued that the death of Deewan Singh was possible from a fall on the glass pieces. Learned counsel has taken a lame stand on the basis of the suggestion given to the Medical Officer P.W.7 Dr. M.L.Agarwal for and on behalf of co-accused Jagat Singh and Bir Ram. It may be noted here that for and on behalf of the accused suggestion was given to P.W.7 in para 6 of his cross-examination and in reply the doctor has stated that the death of the deceased was possible on 16.10.1983 between 1.30 p.m. and 9-10 p.m.: Injury no.1 and 2 were possible from Khukari and that Injury No. 1 was sufficient to cause death in ordinary course of nature. The prosecution version is fully supported by eye witness account referred to hereinbefore. The argument of the learned counsel is of no avail in the facts and circumstances of the case.

25. It was then submitted that the case in hand at the most fall within the ambit of Section 304 Part II I.P.C. instead of Section 302/34 I.P.C. for the death of Deewan Singh as there was absence to intention to kill. In support thereof reference has been made to the case of Dashrath Singh Vs. State of U.P. [(2004) 7 Supreme Court Cases, 408]. In the that case, single blow was given with a Kanta on the person of Pratap Singh on 31.7.1977 who after prolonged treatment and surgery died on 6-9-1977 and the intention to kill him was lacking. In the present case, the prosecution evidence goes to show that deceased Deewan Singh rolled down on the ground after sustaining the Khukari blow and died on the same day while being carried to the hospital. The facts of the present case are quite distinct and do not help the accused. Moreover, in the case of "Darshan Yadav and others Vs. State of U.P." [(2005) 10 Supreme Court Cases, 592] the Apex Court has observed that " Penal Code, 1860-S. 302 r/w S.34- Single injury- Question as to

nature of offence- Submission that only one injury was said to have been inflicted and the same could not give rise to offence under S. 302- Accused inflicted injury by ballam, a sharp-cutting weapon- Doctor found serious injuries in the abdomen of the deceased- He opined that the injury suffered by the victim was sufficient to cause death in the ordinary course of nature-On such facts, held, case under S, 302 clearly made out-Convicted upheld." Therefore, the accused can not seek any benefit on account of one 'Khukari' blow said to have been received by Deewan Singh deceased.

26. From the above narration of the evidence of the three eye witnesses P.W. 1 Jagat Singh, P.W.2, Smt. Debuli Devi and P.W. 3 Dungar Singh produced by the prosecution, it is fully established that accused Uttam Singh and Har Singh assaulted Deewan Singh by Khukari in the field of Jagat Singh P.W.1 on 16.1.1983 at about 1.30 p.m. which resulted in his death. Therefore, both the accused-appellants were guilty of murder under Section 302/34 I.P.C. The F.I.R. of the occurrence Ext. Ka-1 was promptly lodged. Thus, the offence of murder under Section 302 read with Sec. 34 I.P.C. is fully established against the accused. In the occurrence, both the accused made an attempt to commit the murder of P.W.1 Jagat Singh and his wife P.W. 2 Smt. Debuli Devi and in that process, both of them were assaulted by Khukari on the aforesaid date, time and place in the manner as alleged by the prosecution. Therefore, the accused were also guilty of offence punishable under Section 307 of the I.P.C. The learned Sessions Judge, on the basis of evidence on record, has also rightly found accused Uttam Singh guilty for the offence under Section 450 of the I.P.C. The appellants have been rightly convicted and sentenced for the aforesaid offences by the learned Sessions Judge.

27. In the result, the appeal has no merit and is liable to be dismissed.

28. The appeal is hereby dismissed. The impugned judgment and order dated 23-7-1985 convicting and sentencing the accused Uttam Singh and Har Singh to imprisonment for life under Section 302/34 I.P.C. and R.I. for four years under Section 307 I.P.C. and further sentencing accused Uttam Singh for 3 years' R.I. under Section 450 I.P.C. and the sentences to run concurrently is affirmed.

29. Appellants were granted bail by the High Court vide order dated 30-7-1985. Their bail bonds are cancelled and the sureties are discharged. They shall be taken into custody to serve out the sentence awarded.

30. Let the record be transmitted to the Sessions Judge Almora for compliance to be reported to this Court in two months.

(B.S.Verma, J.) **(Irshad Hussain, J.)**

RCP